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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2009**

State of Minnesota,
Respondent,

vs.

Richard D. Gurewitz,
Appellant.

**Filed January 20, 2009
Affirmed
Collins, Judge***

Hennepin County District Court
File Nos. 06073228; CF-07-16124

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, 80 South Eighth Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges his sentences, arguing that the district court erred by imposing a greater-than-double upward departure from the presumptive guidelines sentence without finding severe aggravating factors. Because appellant admitted to substantial aggravating factors, because the sentence is within the range of a double durational departure from the presumptive guidelines sentence, and because the district court did not abuse its discretion, we affirm.

FACTS

From July 2003 to July 2005, appellant Richard Gurewitz, as president and part owner of Home Update Company, entered into a series of transactions with an elderly married couple.¹ Over this two-year period, Gurewitz received 62 payments from the couple totaling approximately \$800,000. The payments were made to Gurewitz for home-remodeling work, which was later valued at between \$40,000 and \$150,000 and which was found to be of substandard quality. After the couple's son discovered what was happening and put a stop to the project, Gurewitz threatened to place liens against the home if the outstanding balance of approximately \$30,000 was not paid. On October 24, 2006, the state charged Gurewitz with five counts of felony theft by swindle over \$35,000.

¹ The husband suffered from Alzheimer's disease, and the wife cared for him in their 600-square-foot home in Minneapolis. The wife died in December 2006 and the husband was moved to a nursing home. Investigators interviewed the wife before she died, and information about the events from her perspective comes in part from that interview.

During the course of the investigation, information about another victim came to light.² From January 2003 to July 2005, this victim made 16 payments to Gurewitz totaling \$209,952 on contracts totaling less than \$165,000 for home-remodeling work, which was later valued at approximately \$75,000. On March 19, 2007, the state charged Gurewitz with one count of felony theft by swindle over \$35,000.

On April 23, 2007, Gurewitz pleaded guilty to all counts in both complaints. There was not a global agreement as to sentencing, but the state agreed to recommend no more than 114 months' imprisonment for the October 2006 charges and a consecutive sentence of 21 months to be stayed for the March 2007 charge. Gurewitz waived his *Blakely* right to a jury determination on aggravating sentencing factors. *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). Of the four aggravating factors alleged by the state, Gurewitz admitted to the following three: (1) the victims were particularly vulnerable; (2) the crimes were major economic offenses; and (3) Gurewitz had continued contracting with the victims after the suspension of his contractor's license.

A sentencing hearing occurred on July 17, 2007, and on July 23 the district court executed concurrent sentences of 54, 78, 90, 114, and 114 months' imprisonment for the 2006 charges, and imposed a consecutive sentence of 21 months for the 2007 charge, which was stayed. The district court relied on the three aggravating factors admitted by Gurewitz to support the consecutive-sentence and durational departures from the presumptive guidelines sentence. The district court made no determination as to the

² This victim had a history of mental illness and had received an inheritance.

fourth factor argued by the state (that Gurewitz had intentionally targeted the victims because of their age or disability), stating that the admitted factors provided ample support and were “substantial aggravating factors which justify upward durational and dispositional departures.” This appeal followed.

D E C I S I O N

A district court has broad discretion to depart from the presumptive sentence under the Minnesota Sentencing Guidelines. *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993). However, “a sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present.” *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). We review departures from presumptive sentences under an abuse of discretion standard, but there must be “substantial and compelling circumstances in the record to justify” a departure. *Rairdon v. State*, 557 N.W.2d 318, 326 (Minn. 1996). “[G]enerally in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length.” *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981).

Gurewitz argues that the 21-month sentence imposed for the March 2007 charge, added to the concurrent sentences of the duration of 114 months for the October 2006 charges, pushes his total sentence over the double-durational-departure limit and thus requires “severe” aggravating factors. Gurewitz contends that the district court’s finding of *substantial* aggravating factors rather than *severe* aggravating factors renders the aggregate sentence erroneous. We disagree.

The 2007 charge involved a different victim and behavioral incidents separate from the 2006 charges. The victim of the 2007 charge was vulnerable due to reduced mental condition. Gurewitz received a stayed sentence of 21 months' imprisonment for the 2007 charge, consecutive to the sentence for the 2006 charges. This consecutive-sentence departure from the guidelines is supported by substantial aggravating factors admitted by Gurewitz and found by the district court. *See* Minn. Sent. Guidelines II.F. (stating that unless crime charged meets requirements for either presumptive or permissive consecutive sentences, consecutive sentences constitute "a departure from the guidelines").

The 2006 charges amounted to a major economic offense. For the 2006 charges, Gurewitz was sentenced to 114 months' imprisonment. The effective presumptive-guidelines-sentence range for these severity-level VI offenses when committed by an offender with a criminal history score of six or more, as here, is 55 to 59 months' imprisonment.³ A double durational departure for the 2006 offenses would be, therefore, a sentence of as long as 118 months. *See Evans*, 311 N.W.2d at 483 (holding that upper departure limit generally is "double the maximum presumptive sentence length"). This durational departure from the guidelines is supported by a substantial aggravating factor admitted by Gurewitz and found by the district court. *See* Minn. Sent. Guidelines II.D. (stating that "[a] sentence outside the applicable range on the grids is a departure" that must be supported by "particular substantial and compelling circumstances").

³ This reflects the presumptive guidelines for 2003 through 2005, when all of the offenses in question occurred.

An upward departure may be imposed if the crime was a “major economic offense” and two or more of the following circumstances are present:

(a) the offense involved multiple victims or multiple incidents per victim; (b) the offense involved . . . monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes; (c) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; (d) the [offender] used his or her position or status to facilitate the commission of the offense[;] . . . or (e) the [offender] has been involved in other conduct similar to the current offense

Minn. Sent. Guidelines II.D.2.b(4). We will modify a departure if we have a “strong feeling that the sentence is inappropriate to the case.” *State v. Malinski*, 353 N.W.2d 207, 209 (Minn. App. 1984) (quotation omitted), *review denied* (Minn. Oct. 16, 1984).

Gurewitz admitted the aggravating factors of “(1) knowingly exploiting victims who were vulnerable due to their age, infirmity, or reduced physical or mental condition; and (2) having committed major economic offenses, as defined by Minnesota Sentencing Guidelines II.D.2.b(4).” Additionally, Gurewitz admitted to continuing contracting with the victims after the suspension of his contractor’s license. The district court found these factors to be “substantial aggravating factors,” supported by the record, and justifying its intended departures from the presumptive guidelines sentence. Based on our careful review of the record, we do not feel that the sentence is at all inappropriate.

Affirmed.